Concise Explanatory Statement
Occupational Exposure to Bloodborne Pathogens
Chapter 296-823 WAC
Public Hearing: January 27, 2003
Rule Adoption: April 22, 2003
Effective: August 1, 2003

We received public comment on the following rule sections and, when appropriate, modified our proposed amendments as indicated below. Housekeeping, typographical and formatting changes were made for clarity to the rule. All other sections proposed for amendment did not receive comment and are adopted as proposed.

Chapter 296-823 WAC Occupational Exposure to Bloodborne Pathogens	**Comment Received**	**Department Response**
• Occupations outside health care – Firefighters, law enforcement personnel, and correctional officers – Workers in laundries that service public safety institutions – Employees assigned to provide emergency first aid by their employer (as either a primary or secondary duty) – Employees who handle or pick up regulated waste (contaminated items with blood or OPIM) – Hotel/motel employees that clean up blood or OPIM – Employees of funeral homes and mortuaries	With respect to occupations outside of health care, the proposed standard applies to employers assigned to provide emergency first aid to their employer as either a primary or secondary duty. This application was not found n the original standard. The term "primary or secondary duty" are not defined in this proposed standard. This proposal was not consistent with the connotation or denotation of the original standard. Indeed,the last information I have from the American Red Cross or EMP is that they are unaware of any first-aider who has acquired bloodborne pathogen from giving first aid. There's no epidemiological evidence provided by Labor and Industries or NIOSH or any other source that I'm aware of that there is a need for this. WISHA additionally requires body substance isolation and bloodborne pathogens be addressed as part of the first-aid training requirements. We believe it is inappropriate to apply what was meant for health care business and written for the medical communities to first-aiders. There must be something that needs to be written in the context of that user. As a first-aid instructor, there is sufficient, in my opinion, in the training materials to	WISHA believes the term primary duties is generally understood as meaning major responsibilities assigned to a job class or position. No change. It can be reasonably anticipated that first aid providers may be exposed to blood or OPIM while providing first aid. Coverage of first aid providers under the rule is not an increase or change in requirements. The industries listed have always been covered by this rule—they have been included as examples. See WISHA Regional Directive 11.40, Bloodborne Pahtogens. No change.

	address this subject. If the training required in the bloodborne pathogen standard is given to first aid, then it will constitute a greater portion of the first-aid training than any other topic. And while first-aid training is good for two years, the bloodborne pathogen training is good for only one. I think this requirement is incredulous, given the incredibly low risk that first-aiders have. There are other well-recognized risks to good Samaritan, good first-aiders that L&I is not addressing and could address if they wanted to reduce the morbidity and mortality to this group. Last week I met with an employer who provides first-aid training to approximately 150 employees who do not require it at a single site. This employee indicates to me that they will not be likely to provide this training if they become subject to the onerous requirements of training under the bloodborne pathogen standard. I believe this is a huge change as is written. In connotation in the standard, it will affect thousands, perhaps tens of thousands, of employers. There are considerable costs associated with developing the site specific plan and yearly administration to first-aiders. As such, I believe Labor and Industries is in violation of the Administrative Procedures Act and Small Business Economic Impact Statement and other economic analysis required in that act. Somewhat similarly, employees who handle or pick up regulated waste, contaminated items with blood or OPIM, and hotel/motel employees who clean up blood or OPIM are being included under the proposed regulations, and	WISHA added the definition of regulated waste to the scope of the rule for clarification.

	they were not included under the original standard. There is a WAC 296-62-080, Biological Agents, which already requires an employer to protect from exposure -- workmen shall be protected from exposure to hazardous concentrations of biological agents which may arise from processing, handling, or using materials or waste. Again, I believe, this is a huge change, potentially affecting thousands of employers. There are considerable costs associated with this. And with respect to regulations specific to hotel/motel workers, they face a number of hazards. WISHA has not yet put forth a vertical standard to these people, but there are a number of much more important regulations that could be promulgated to reduce the injuries and disease that these workers get. For instance, they have a much greater exposure to fecal matter, which is well known to host a whole number of pathogens than there is to bloodborne pathogens. Occupations outside health care – Employees assigned to provide emergency first aid by their employer (as either a primary or ~~secondary~~ collateral duty)[Comment: the definition section 823.200 includes a definition of "collateral duty". Suggest this term be used here instead of "secondary" for consistency	All references to "collateral duty" were changed to "secondary duty

WAC 296-823-11005 Determine if you have employees with occupational exposure You must • Make sure the exposure determination contains: – a list of job classifications where all employees have occupational exposure. – <u>a list of job classifications where some employees have occupational exposure and a description of all tasks and procedures or groups of related tasks and procedure with occupational exposure for these employees</u>.	WAC 296-823-11005 Determine if you have employees with occupational exposure. You must: • . Make sure the exposure determination contains: – A list of job classifications where all employees have occupational exposure; – A list of job classifications where some employees have occupational exposure; and – A description of all tasks and procedures or groups of related tasks and procedures with occupational exposure for these employees <u>in the job classifications listed in accordance with the requirement to make a "list of job classifications where some employees have occupational exposure". [Comment: the current rule links this requirement to the "some employees have occupational exposure"] Without the qualification, this requirement expands the requirement in this section.]</u>	WISHA agrees and made the change.
WAC 296-823-11010 Develop and implement a written exposure control plan You must • ~~Document the use of universal precautions or other at least as effective infection control systems~~ • <u>Document the infection control system used in your workplace to protect employees from exposure to blood or OPIM. - Use universal precautions or other at least as effective infection control systems.</u>	WAC 296-823-11010 Develop and implement a written exposure control plan. You must: . <u>The current rule requires that the exposure control plan contain a method of implementation for methods of compliance. It appears that the "methods of compliance" reference has been replaced with "How and when you will implement applicable requirements of this rule", above. Existing rule Subsection 4 requires that universal precautions shall be observed. The requirement to "document the use of universal precautions" could be read to create additional requirements. Does the employer need to document when universal controls are used, or document in the plan that universal controls is a method of compliance? Because of the confusion this creates, suggest deletion.</u>	WISHA agrees and made the change.

• Make sure a copy of the plan is provided to the employee or their representative within 15 days of their request for a copy.	. Make sure a copy of the plan is ~~provided~~ accessible to the employee or their representative within fifteen days of their request for a copy. [Comment: the current rule requires that the plan be accessible in accordance with the access to medical/exposure records.]	The current rule requires that the exposure control plan be accessible in accordance with WAC 296-62-05209, which requires that whenever an employee or designated representative requests a copy of a record that "A copy of the record is provided without cost to the employee or representative." WISHA pulled the requirement from WAC 296-62-05209 instead of referencing it. No change.

WAC 296-823-13010 Obtain a copy of the healthcare professional's written opinion and provide it to the employee You must • Make sure that all other findings or diagnoses remain confidential and are not included in the written report. Reference: Requirements for the healthcare professional's written opinion for post-exposure evaluation can be found in WAC 296-823-16030 of this chapter.	WAC 296-823-15010 section would be better placed just before 296-823-17030 as it is speaking to follow up post exposure and the healthcare professional's written opinion. It's confusing where it is—makes it sound like a healthcare professional needs to recommend the hepatitis B vaccine for every employee.	A healthcare professional's written opinion is required for both hepatitis B vaccination and post-exposure evaluation. WISHA will add a reference to clarify the information.
WAC 296-823-14005 ~~Use controls to minimize or eliminate exposure.~~ Use appropriate equipment and safer medical devices to eliminate or minimize occupational exposure You must ~~1.Use effective controls that do NOT rely primarily on individual employee behavior to protect employees from blood or OPIM.~~	WAC 296-823-12005 Use controls to minimize or eliminate exposure. You must: (1) Use ~~effective controls that do not rely primarily on individual employee behavior to protect employees from~~ engineering and work practice controls to eliminate or minimize employee exposure to blood or OPIM. [Comment: use of some of the controls listed below do rely on employee behavior. Adding the above requirement is confusing.	WISHA clarified the title.
WAC 296-823-14030 Make sure employees ~~wash~~ clean their hands You must 1. Provide hand washing facilities that are readily accessible to employees, wherever feasible. If hand washing facilities are not feasible provide either one of the following: - antiseptic towelettes - antiseptic hand rub product along with clean cloth/papertowels	This section should be rewritten to better following the current standard. The combining of sentences loses the fine points of the existing standard. WAC 296-823-16010 Make sure employees wash their hands. You must: (1) Provide handwashing facilities that are readily accessible to employees, wherever feasible. If handwashing facilities are not feasible, you must either provide an appropriate antiseptic hand cleanser in conjunction with clean cloth/paper towels or antiseptic towelettes. When antiseptic hand cleaners or towelettes are used, hands shall be washed with soap and running water as soon as feasible. (2) Make sure employees clean their hands and ~~any other skin~~	Current Centers for Disease Control hand hygiene guidelines (MMWR vol. 51, RR16) allow the use of waterless antiseptic hand cleansers when hands are not visibly soiled. This rule reflects current CDC guidelines and does not conflict with the current rule that requires the use of soap and water only "…following contact of such body areas with blood or other potentially infectious materials." WISHA changed the rule language to require that employers provide a clean cloth or paper towels when hands are visibly soiled but handwashing facilites are not available.

	~~after removal of gloves or whenever there is the potential for contact with blood or other potentially infectious materials (OPIM). This must be done by one of the following:~~ immediately or as soon as feasible after removal of gloves or other personal protective equipment. • ~~Washing with soap and water~~ • ~~Washing with appropriate waterless antiseptic hand rubs or towelettes, provided there are no signs of visible contamination~~ • ~~Washing with appropriate waterless antiseptic hand rubs or towelettes followed by soap and water as soon as possible, if visibly contaminated with blood or OPIM.~~ (3) Make sure employees wash hands and any other skin with soap and water, or flush mucous membranes with water immediately or as soon as feasible following contact of such body areas with blood or other potentially infectious materials.	

WAC 296-823-15015 Make sure appropriate masks, eye protection, and face shields are worn You must • Make sure either chin-length face shields or a combination of masks and eye protection are used, whenever splashes, spray, spatter, or droplets of blood or other potentially infectious materials (OPIM) may be generated and ~~could contaminate~~ the eyes, nose, or mouth contamination can be reasonably anticipated.	WAC 296-823-13015 Make sure appropriate masks, eye protection, and face shields are worn. You must: . Make sure either chin-length face shields or a combination of masks and eye protection are used, whenever splashes, spray, spatter, or droplets of blood or other potentially infectious materials (OPIM) ~~could contaminate the~~ may be generated and eye, nose, or mouth contamination can be reasonably anticipated. [Comment: it is important to keep the existing regulatory standard of "reasonably anticipated" in the current standard.	WISHA agrees and made the change.
WAC 296-823-16005 Make a confidential medical evaluation and follow-up available to employees who experience an exposure incident You must • Make immediately available a confidential post-exposure evaluation and follow-up to all employees with occupational exposure to blood or OPIM who report an exposure incident. Note: The employer or a third party healthcare provider identified by the employer may do the evaluation.	WAC 296-823-17005 Provide post-exposure evaluation and follow-up for exposure incidents. You must: . Make immediately available a confidential post-exposure evaluation and follow-up to all employees with occupational exposure to blood or OPIM who report an exposure incident. [Comment - the evaluation may be done by the employer or a third party health care provider. As worded the language could be misunderstood.]	WISHA added a note for clarity.
• Make sure that the evaluation and follow-up includes AT LEAST these elements: – identification and documentation of the source individual, unless the employer can establish that identification is ~~impossible~~ not feasible or prohibited by state or local law	– Identification and documentation of the source individual, unless the employer can establish that identification is ~~impossible~~ infeasible or prohibited by state or local law [Comment: the current requirement is "infeasible". The requirement should not change to "impossible".	WISHA agrees and made the change.

WAC 296-823-16010 Test the blood of the source person	WAC 296-823-17010- the law should require HCV testing – looks like it is just a recommendation at this point.	Including the requirement to test the source individual for HCV would be an increase in requirements. In this rulemaking WISHA is not increasing requirements.
WAC 296-823-16030 Obtain a copy of the helathcare professional's written opinion on post-exposure evaluation and provide it to the employee Reference: Requirements for the healthcare professional's written opinion for hepatitis B vaccinations can be found in WAC 296-823-13010.	WAC 296-823-15010 Obtain a copy of the healthcare professional's written opinion for hepatitis B vaccination and provide it to the employee. You must: [Comment: Since there are two written opinions referenced, add language here to indicate which is addressed. Consider also referencing where the written opinion for post-exposure follow up is locatetd. Or state something to the effect that there are two written opinions (hep B and post-exposure evaluation. This section addresses hep b. See ____ for post exposure followup.]	A healthcare professional's written opinion is required for both hepatitis B vaccination and post-exposure evaluation. WISHA will add a reference to clarify the information.
WAC 296-823-17010 Maintain a sharps injury log Exemption: You are exempt from the requirements to record contaminated sharps injuries if you have 10 or less employees. You must • Record contaminated sharps injuries on your OSHA 300 or equivalent log.	There is a confusing statement in Section WAC 296-27-01109 stating " You must enter the case on the OSHA 300 log." WAC 296-823-18010 it states "Record contaminated sharps injuries on your OSHA 300 or equivalent log." They should both read the same.	WAC 296-27-01117 (c) (1) allows for the use of an OSHA 300 or equivalent log. No change.
	Collateral duty A job duty that exists outside of the primary job duties assigned to that position. [Comment: the word "expectation" is too vague. The requirement must be a job duty. Consider adding the following from the WRD: "If the employer assigns an employee (either formally or informally) to provide first aid as part of his or her job duties, that employee is covered by the standard."	All references to "collateral duty" were changed to "secondary duty."
	Definition of Engineering controls missing	The term "engineering controls" is no longer being used by the department. Examples of control equipment are provided in WAC 296-823-120.

		No change
Safer Medical Devices Medical devices that have been engineered to reduce the risk of needlesticks and other contaminated sharps injuries. These include not only sharps with engineered sharps injury protections and ~~needless~~ needleless systems but also other medical devices designed to reduce the risk of sharps injury exposures to bloodborne pathogens. Examples include blunt suture needles and plastic or mylar-wrapped glass capillary tubes.	Safer medical devices Medical devices that have been engineered to reduce the risk of needlesticks and other contaminated sharps injuries. These include not only sharps with engineered sharps injury protections and ~~needless~~ needleless systems but also other medical devices designed to reduce the risk of sharps injury exposures to bloodborne pathogens. Examples include blunt suture needles and plastic or mylar-wrapped glass capillary tubes.	WISHA made change.
Occupational exposure Reasonably anticipated skin, eye, mucous membrane, or parenteral contact (~~including potential contact as well as actual contact~~) with blood or OPIM that may result from the performance of an employees job duties.	Occupational exposure. Reasonably anticipated skin, eye, mucous membrane, or parenteral contact (~~including potential contact as well as actual contact~~) with blood or OPIM that could result from the performance of an employee's duties. [See comments on this definition in Section 823.200.] Occupational exposure Reasonably anticipated skin, eye, mucous membrane, or parenteral contact [Comment: the current OSHA and WISHA standards refer to "reasonably anticipated". "Potential…as wells as actual" either modifies "reasonably anticipated" in some way, which it should not, or is redundant and should not be added. We recognize these words are currently in the WRD/CPL. with blood or OPIM that could result from the performance of an employee's duties. [Comment: This term is also defined in 823-100. The definitions should be the same]. Under the proposed WAC 296-823 definitions, Occupational exposure -- Reasonably anticipated skin, eye, mucous membrane or parenteral contact (including potential contact as well as actual contact) with blood or OPIM, that could	WISHA agrees and clarified the definition.

	result from the performance of an employee's duties. The term "duties" has a very crucial meaning. I have not yet met a person, an employer, or a professional safety person who understood its pivotal role and significance in determining whether the standard is applicable or not. I have seen many employers that should not have applied this standard but applied because they did not understand this distinction.	
	When this standard was promulgated, it was applicable to approximately 5 percent of the employers in the country, and I presume similarly in Washington, but it left 95 percent of employers without any guidance whatsoever. I believe WISHA could put forth some guidance to help employers prepare to deal with bloodborne pathogens when this standard does not apply to them but they indeed want to do something. I have on many occasions prepared a page or so of such that I personally believe give better protection than the lengthy -- and the proposed standard as shared this morning is a some 55 pages document that Labor and Industries puts forth in their regulation.	This concern is separate from the rulemaking. WISHA will turn this comment over to our training and outreach program.
	Didn't find the resource section of the chapter for sample HBV declination form and health professional written opinion.	The resource section of this chapter was not provided at the rule proposal stage. This is available with the rule adoption.